

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

David L. Henderson, #255117,)	
)	C/A No. 9:08-0978-MBS
Petitioner,)	
)	
vs.)	
)	O R D E R
Richard Bazzle, Warden of Perry)	
Correctional Institution,)	
)	
Respondent.)	
_____)	

Petitioner David L. Henderson is an inmate in custody of the South Carolina Department of Corrections. On March 24, 2008, Petitioner filed the within petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge George C. Kosko for pretrial handling. On April 4, 2008, the Magistrate Judge issued a Report and Recommendation in which he noted that Petitioner's § 2254 is time-barred. He also noted that the within action is successive to a § 2254 petition previously filed with the court. See Henderson v. McMaster, C/A No. 9:06-1696-MBS. Because Petitioner has not received permission from the Court of Appeals for the Fourth Circuit to file a successive § 2254 motion, the court is without jurisdiction. See 28 U.S.C. § 2244(b)(1); Rules Governing Section 2254 Cases, Rule 9. Accordingly, the Magistrate Judge recommended that the within petition be dismissed without prejudice and without requiring Respondent to file a return. Petitioner filed no objection to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo

determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The court concurs in the recommendation of the Magistrate Judge. Accordingly, the within action is dismissed without prejudice and without requiring Respondent to file a return.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Court

Columbia, South Carolina

April 29, 2008

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.